

Exhibit "OO"

10:05

United States District Court

FOR THE DISTRICT OF OREGON

ISLAND HOLDINGS, INC., an
Oregon corporation

SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: CV91-1121-RE

CENEX, LTD., a Minnesota
corporation

TO: (Name and Address of Defendant)

CT Corporation Systems
800 Pacific Building, 520 S.W. Yamhill
Portland, OR 97204

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

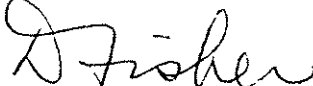
Bruce M. Hall
Bruce MacGregor Hall, P.C.
1150 Pioneer Tower
888 S.W. Fifth Avenue
Portland, OR 97204-2096

Richard H. Allan
Ball, Janik & Novach
1100 One Main Place
101 S.W. Main Street
Portland, OR 97204

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DONALD M. CINNAMOND

CLERK



BY DEPUTY CLERK

DATE

10/28/91

RECEIVED

91 OCT 25 PM 4:27

CLERK, U.S. DISTRICT COURT
PORTLAND, OREGON

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BRUCE MACGREGOR HALL, P.C.
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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ISLAND HOLDINGS, INC., an
Oregon corporation,

Plaintiff,

v.

CENEX, LTD., a Minnesota
corporation,

Defendant.

Case No. CV 91-1121-RE

COMPLAINT

(Statutory Cost Recovery,
Declaratory Relief, Trespass
and Private Nuisance)

PARTIES

1

Plaintiff Island Holdings, Inc. is an Oregon
corporation with its principal place of business in Portland,
Oregon.

2

Defendant Cenex, Ltd. is a Minnesota corporation with
its principal place of business in Minnesota.

JURISDICTION AND VENUE

3

This is an action for cost recovery and declaratory relief under 42 U.S.C. § 9607(a), and cost recovery, declaratory relief and damages under related state law claims. This Court has jurisdiction over this action under 28 U.S.C. § 1331; under the Court's pendent jurisdiction over related state law claims; and by reason of the diversity of citizenship between plaintiff and defendant. The amount in controversy, exclusive of interest and costs, exceeds \$50,000. The acts alleged took place in whole or in part in Oregon, and the real property affected by the acts alleged is located in Oregon.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

4

Plaintiff is the lessee of real property located at 5885 N. Basin Avenue, Portland, Oregon (the "Property") under an assignment from OK Delivery System, Inc. of its rights and interest under a lease agreement entered into between OK Delivery System, Inc. as lessee and the Port of Portland as lessor, dated May 15, 1980 (the "Lease").

5

Pacific Supply Cooperative purchased the Property from the Port of Portland in 1963. The Port of Portland purchased the Property back in 1977. Pacific Supply Cooperative occupied the Property from 1963 to September 1977 as lessee and/or owner.

On or about September 30, 1976, defendant acquired Pacific Supply Cooperative.

Defendant occupied the property as a lessee from the Port of Portland from September 1977 to May 15, 1980. PAX Company occupied the Property as a lessee from July 1979 until May 15, 1980. PAX Company is and at all material times was a wholly-owned subsidiary of defendant.

At the request of the Port of Portland, plaintiff's predecessor in interest OK Delivery System, Inc. allowed defendant and PAX Company to remain on the Property from May 15, 1980 until July 1980 in order to wind down operations.

From 1963 until it ceased operations on the Property in July 1980, defendant, Pacific Supply Cooperative, and PAX Company used some or all portions of the Property to blend, package, store, load and unload agricultural chemicals, including pesticides, herbicides and fertilizers.

Solely as a consequence of the activities by defendant, Pacific Supply Cooperative, and PAX Company on the Property, portions of the Property, including soils, ground water and part of a warehouse, are contaminated with detectable concentrations of chemical residues (the "Contamination").

FIRST CLAIM FOR RELIEF

(Statutory Cost Recovery--Federal)

11

Plaintiff realleges paragraphs 1-10 above, and incorporates them by reference.

12

The chemical residues constituting the Contamination are hazardous substances within the meaning of Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, which defendant has disposed of on the Property, and the Property thereby is a "facility" within the meaning of Section 101 of CERCLA.

13

Plaintiff has incurred necessary costs of response consistent with the National Contingency Plan to investigate, monitor, and evaluate the release or threat of release of hazardous substances on or from the Property. Plaintiff was required to retain an environmental engineering firm, Sweet-Edwards/EMCON, Inc., and has paid said firm \$7,149.17 to investigate, monitor, and evaluate the release or threat of release of hazardous substances arising from the Contamination. Plaintiff also was required to retain legal counsel in order to respond to the release or threat of release of hazardous substances arising from the Contamination.

1
2 Plaintiff is entitled to recover from defendant the
3 response costs incurred by plaintiff, pursuant to Section 107(a)
4 of CERCLA, 42 U.S.C. § 9607(a).

5 SECOND CLAIM FOR RELIEF

6 (Statutory Cost Recovery--Oregon)

7
8 Plaintiff realleges paragraphs 1-10 and 13 above, and
9 incorporates them by reference.

10
11 The chemicals constituting the Contamination are
12 hazardous substances within the meaning of Or. Rev. Stat.
13 § 465.200(9).

14
15 The Property is a "facility" within the meaning of Or.
16 Rev. Stat. § 465.200(6).

17
18 Plaintiff has incurred remedial action costs
19 attributable to or associated with the Property, within the
20 meaning of Or. Rev. Stat. § 465.255.

21
22 Plaintiff is entitled to recover from defendant
23 plaintiff's remedial action costs attributable to or associated
24 with the Contamination on the Property, pursuant to Or. Rev.
25 Stat. § 465.255.

1
2 In the alternative, defendant, acting in its own
3 capacity and/or through PAX Company, unintentionally,
4 negligently, and without authority caused the Contamination to
5 remain on the Property after the expiration of defendant's
6 rightful occupancy of the Property.

7
8 In the alternative, defendant, acting in its own
9 capacity and/or through PAX Company, unintentionally, without
10 authority, and in the course of conducting an ultrahazardous
11 activity on the Property, caused the Contamination to remain on
12 the Property after the expiration of defendant's rightful
13 occupancy of the Property.

14
15 Plaintiff first became aware of the aforementioned
16 trespass on or after October 25, 1989.

17
18 Under a lease dated December 1, 1990, plaintiff
19 subleases to BTS Container Service, Inc. ("BTS") a portion of the
20 Property. As a consequence of defendant's aforementioned
21 trespass, BTS is unable to utilize a portion of the subleased
22 space, and plaintiff has been unable to collect from BTS rentals
23 thereon in the amount of \$1,647.00 per month.
24
25
26

Under plaintiff's Lease from the Port of Portland, plaintiff is entitled to purchase the property at the expiration or sooner termination of the lease term for \$100 plus certain fees and expenses. The terms of the purchase option have the effect of giving plaintiff an equity interest in the Property.

Defendant's aforementioned trespass has diminished the value of plaintiff's equity interest in the Property.

Plaintiff is entitled to recover from defendant damages for defendant's trespass, including lost rents and the diminution in the value of plaintiff's equity interest in the Property.

FIFTH CLAIM FOR RELIEF

(Private Nuisance)

Plaintiff realleges paragraphs 1-10, and 28-29 above, and incorporates them by reference.

Defendant, acting in its own capacity and/or through PAX Company, intentionally, recklessly, negligently, or in the operation of an abnormally dangerous activity created, maintained, and failed to abate the contamination on the Property.

1 The Contamination substantially and unreasonably
2 interferes with plaintiff's interest in the use and enjoyment of
3 the Property.
4

5 Plaintiff first became aware of the Contamination and
6 of defendant's substantial and unreasonable interference with
7 plaintiff's enjoyment of the Property on or after October 25,
8 1989.
9

10 As a consequence of the Contamination, plaintiff has
11 suffered lost rentals and a diminution in the value of
12 plaintiff's equity interest in the Property, and plaintiff is
13 entitled to recover from defendant damages therefor.
14

15 WHEREFORE, plaintiff prays for judgment against
16 defendant as follows:

17 1. On its First Claim for Relief: Damages in an amount to
18 be determined at trial, equal to all necessary response costs
19 incurred by plaintiff as a consequence of the Contamination.

20 2. On its Second Claim for Relief: Damages in an amount
21 to be determined at trial, equal to all remedial action costs
22 incurred by plaintiff as a consequence of the Contamination.

23 3. On its Third Claim for Relief: A declaratory judgment
24 that defendant is solely responsible for the Contamination and
25 that all response costs and remedial action costs resulting from
26 the Contamination shall be borne solely by defendant.

1 4. On its Fourth Claim for Relief: Damages in an amount
2 to be determined at trial equal to plaintiff's lost rents
3 resulting from the Contamination, and the diminution in the value
4 of plaintiff's equity interest in the Property as a consequence
5 of the Contamination.

6 5. On its Fifth Claim for Relief: Damages in an amount to
7 be determined at the trial equal to plaintiff's lost rents
8 resulting from the Contamination, and the diminution in the value
9 of plaintiff's equity interest in the Property as a consequence
10 of the Contamination.

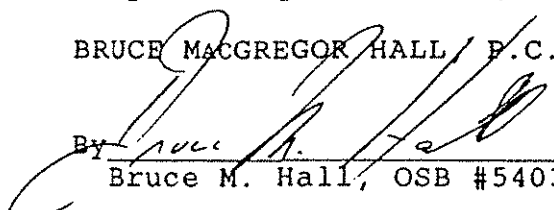
11 6. For its costs and disbursements herein.

12 7. For its attorneys fees herein, pursuant to 42 U.S.C.
13 § 9607.

14 8. For such other and further relief as the Court may find
15 just and equitable.

16 Respectfully submitted,

17 BRUCE MACGREGOR HALL, P.C.

18 By 
19 Bruce M. Hall, OSB #54038

20 BALL, JANIK & NOVACK

21 Richard H. Allan, OSB #88147
 Of Attorneys for Plaintiff

22 DATED: October 25, 1991

23 W63/03/0054/03

Exhibit "PP"

1 MICHAEL C. McCLINTON, OSB 72156
2 JAMES C. EDMONDS, OSB 86184
3 CLARK, LINDAUER, McCLINTON,
4 KRUEGER, FETHERSTON & EDMONDS
5 P. O. BOX 2206
6 SALEM, OR 97308-2206
7 PHONE: (503) 581-1542
8 Attorneys for Defendant Cenex, Ltd.

9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF OREGON

11	ISLAND HOLDINGS, INC., an)	
12	Oregon corporation,)	CASE NO. CV91-1121-RE
13)	
14	Plaintiff,)	
15)	ANSWER
16	v.)	
17)	
18	CENEX, LTD., a Minnesota)	
19	corporation,)	
20)	
21	Defendant.)	

22 Defendant, by and through its attorneys, alleges as follows
23 in response to Plaintiff's Complaint:

24 1.

25 Defendant admits paragraphs 1 and 2 of Plaintiff's Complaint,
26 and Defendant further admits that based upon current information
27 and belief, it purchased the assets of Pacific Supply Cooperative
28 and that PAX Company was a subsidiary of Defendant. Except as
29 expressly admitted herein, Defendant is without sufficient
30 information and belief to admit or deny the remaining allegations

1 of Plaintiff's Complaint and thereby denies all such allegations,
2 and the whole thereof.

3 * * * *

4 For further Answer and First Affirmative Defense, Defendant
5 alleges as follows:

6 2.

7 The Complaint fails to state a claim against Defendant upon
8 which relief can be granted.

9 * * * *

10 For further Answer and Second Affirmative Defense, Defendant
11 alleges as follows:

12 3.

13 The claims for relief alleged by Plaintiff are barred under
14 the applicable statutes of limitation.

15 * * * *

16 For further Answer and Third Affirmative Defense, Defendant
17 alleges as follows:

18 4.

19 Plaintiff's claims for relief are barred by the doctrine of
20 laches and other applicable statutes of ultimate repose.

21 * * * *

22 For further Answer and Fourth Affirmative Defense, Defendant
23 alleges as follows:

24 5.

25 Plaintiff has waived its rights to assert the claims for
26 relief alleged in its Complaint.

Page 2 - ANSWER

* * * *

For further Answer and Fifth Affirmative Defense, Defendant alleges as follows:

6.

Plaintiff is not the real party in interest to prosecute this action, or, in the alternative, Plaintiff lacks the capacity to seek the relief sought from Defendant.

WHEREFORE, Defendant demands judgment and payment of its costs and disbursements.

CLARK, LINDAUER, McCLINTON,
KRUEGER, FETHERSTON & EDMONDS

By: /s/ JAMES C. EDMONDS
Michael C. McClinton, OSB 72156
James C. Edmonds, OSB 86184
880 Liberty St., NE, PO Box 2206
Salem, OR 97308-2206
(503) 581-1542
Of Attorneys for Defendant
Trial Attorney: Michael C. McClinton

1 STATE OF OREGON)
2) ss.
3 County of Marion)

4 I hereby certify that I am one of the attorneys for the party
5 stated below; that I served the within Answer on the following
6 persons at the addresses shown:

7 Bruce M. Hall
8 Bruce MacGregor Hall
9 1150 Pioneer Tower
10 888 S.W. Fifth Avenue
11 Portland, OR 97204-2096
12

13 Richard H. Allan
14 Ball, Janik & Novach
15 1100 One Main Place
16 101 S.W. Main Street
17 Portland, OR 97204
18

19 Of Attorneys for Plaintiff

20 by placing a true and correct copy thereof, duly certified to be
21 such by me, as such attorney, in a sealed envelope, postage fully
22 prepaid, and depositing the same in the U.S. Post Office at Salem,
23 Marion County, Oregon, on the date stated below.

24 I certify that I reside and have my office in Salem, Marion
25 County, Oregon.

26 DATED this 19th day of November, 1991.

27 /s/ JAMES C. EDMONDS
28

Of Attorneys for Defendant

CERTIFICATE OF MAILING

CLARK, LINDAUER, McCLINTON,
KRUEGER, FETHERSTON & EDMONDS

ATTORNEYS

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